TENNECO OIL CO.

IBLA 82-179 Decided April 28, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, which held that no diligent drilling operations were being performed on leased land on the expiration date of the lease sufficient to qualify oil and gas lease M 34516 (ND) Acq. for a 2-year extension.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Termination

   An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

2. Oil and Gas Leases: Drilling--Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination--Oil and Gas Leases: Unit and Cooperative Agreements

   To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

3. Hearings--Oil and Gas Leases: Termination--Oil and Gas Leases: Extensions--Rules of Practice: Hearings

   Upon a determination that an oil and gas lease terminated because no drilling

operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

APPEARANCES: John W. Morrison, Esq., Bismarck, North Dakota, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Tenneco Oil Company (Tenneco) has appealed the November 4, 1981, decision of the Montana State Office, Bureau of Land Management (BLM), holding that lease M-34516 (ND) Acq. 1/ expired by operation of law on July 31, 1981, because no diligent drilling operations were being performed on the leased lands, nor was the lease committed to a producing communitization agreement, prior to the expiration date. BLM's action was based on an October 7, 1981, report from Geological Survey (Survey) stating that the well, Earl Schwartz well No. 1, Glenburn field, NE NE sec. 15, T. 158 N., R. 82 W., was not spudded until August 15, 1981.

Lease M-34516 (ND) Acq., covering the W 1/2 NE 1/4 NE 1/4 and the S 1/2 NE 1/4, sec. 15, T. 158 N., R. 82 W., was issued to Palmer Oil Company (Palmer) on August 1, 1976, for a primary term of 5 years. It was committed to communitization agreement NCR-289 on July 31, 1981, effective July 1, 1981. The lease was assigned by Palmer to Tenneco, and on November 28, 1980, Tenneco filed a request for approval of the assignment. The request has not yet been acted upon by BLM. Thus, the first issue in this case is Tenneco's standing to appeal BLM's determination that the Palmer lease has expired.

The second issue is appellant's assertion that Survey is incorrect in stating that the well was not spudded until August 15, 1981. According to Tenneco, oral permission was obtained from the Oil and Gas Division of the North Dakota State Industrial Commission on July 31, 1981, for the commencement of drilling activity, prior to the issuance of the permit for the well on August 3, 1981. Site leveling and digging of the necessary pits allegedly began on the morning of July 31; and in the afternoon of the same day a drilling rig owned by Star Well Service was moved onto the site, and the well was spudded before midnight. Tenneco asserts that the spudding was witnessed by Dan Schwartz, an employee of the Earl Schwartz Company; by Robert Weise, the landowner; and by a drilling crew headed by Arlen Sloberg. Appellant correctly cites authority to the effect that "a well can be spudded at any time prior to midnight of the last day of the lease term." Thelma M. Holbrook, 75 I.D. 329 (1968); Wlliams and Meyers, Manual of Oil and Gas

1/ BLM's Nov. 4 decision actually concerned two leases, M-34516 (ND) Acq. and M-19147, which terminated Aug. 31, 1981. However, only the former is being appealed here.

Terms, 1981 ed., p. 718. There is no indication in the file that BLM was provided with this information prior to its November 4, 1981, decision.

According to appellant, the only issue in this case, therefore, is "whether the well on the communitized area was spudded prior to midnight on July 31, 1981." By separate request, appellant asks for a hearing on this issue. BLM, however, noting that its November 4, 1981, decision was erroneously issued to Tenneco rather than to Palmer, the record titleholder, has requested that the Board remand the case to it for correction of the decision.

As to the issue of Tenneco's standing to pursue this appeal, while the Board has held that a purported assignee which has never applied to BLM for approval of an offer or lease may not have standing to appeal to this Board (D. R. Weedon, Jr., 51 IBLA 378, 387 (1980), aff'd, No. 81-0749 (D.D.C. Oct. 9, 1981), it has also previously indicated its view that the assignee of an unapproved assignment has standing to appeal from decisions adverse to its interests. (See Rosita Trujillo, 20 IBLA 54, 55 n.1 (1975).) And, of course, once an oil and gas lease has been held to be terminated, no assignment can be approved. Jack J. Grynberg, 53 IBLA 165 (1981).

[1] To put the issue to rest, therefore, we expressly hold that the de facto assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law does have standing to appeal that decision to this Board, even though the assignment has not yet been approved by BLM. We do not hold, however, that BLM is required to give separate notice to such an assignee. Thus, for the purpose of this appeal, a remand of the case to BLM for correction of its November 4, 1981, decision is not required.

[2] As to the merits of the appeal, it has long been held that to qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well, as demonstrated by the circumstances; e.g., by a showing that the operation was thereafter carried forward to such an extent that the effort constituted an acceptable test of a geological stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered. D. L. Cook, 20 IBLA 315 (1975). In this case, appellant alleges that the well was actually completed, to a depth of 4,677 feet, on August 21, 1981, and that it is currently producing 15 to 18 barrels per day. Thus, the only issue is, as appellant argues, whether the well was actually spudded prior to midnight on July 31, 1981.

[3] We find that where there has been a determination that an oil and gas lease was terminated by operation of law because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, but where the lessee of record or its de facto assignee alleges that a well was actually spudded prior to midnight on the relevant date, the lessee and the assignee are entitled to a hearing before an Administrative Law Judge if such a hearing is necessary to determine the relevant facts. However, in the interests of

economy, we deem it more appropriate to remand this case to BLM for referral to Survey. Appellant or lessee should submit the evidence of spudding to Survey directly. If Survey determines after review of such evidence that no well was spudded by midnight on July 31, 1981, as alleged, then due notice shall be given to lessee and appellant by BLM, advising them of the basis for the determination and that they may request a hearing before an Administrative Law Judge on the question. If a hearing is requested, the case shall be transferred to the Hearings Division, Office of Hearings and Appeals, for decision. Cf. John Swanson, 51 IBLA 239 (1980).

Appellant's request for hearing is granted as set forth above. BLM should refrain from issuing a new decision to Palmer with respect to lease M-34516 (ND) Acq. until the issue that is the subject of this appeal has been resolved and until a decision has been made on whether to approve the requested assignment to Tenneco.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further action consistent herewith.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge